

Montana Water Court  
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**FILED**  
04/05/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43A-6005-A-2023  
White, Eugene  
2.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: 505 Ventures, LLC

**CASE 43A-6005-A-2023**  
43A 33116-00  
43A 33117-00  
43A 33119-00  
43A 33122-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. Claims 43A 33116-00, 43A 33117-00, 43A 33119-00, and 43A 33122-00 were each included in a Closing Order issued by the Water Court on March 18, 2021, in Case 43A-0283-R-2021.

2. On November 7, 2022, 505 Ventures, LLC ("505 Ventures") filed a *Motion to Amend* claims 43A 33116-00, 43A 33117-00, 43A 33119-00, and 43A 33122-00. The *Motion* states that during the adjudication of Case 43A-0287-R-2021, it became apparent that the section lines on the claim maps associated with 505 Ventures' water rights were incorrect. 505 Ventures seeks to correct the incorrect places of use found on the above-listed claims as a result of the incorrect maps.

3. 505 Ventures' *Motion* goes on to state that the legal land descriptions for the place of use for claims 43A 33116-00, 43A 33117-00, 43A 33119-00, and 43A 33122-00 should be:

<b><u>43A 33116-00 and 43A 33117-00</u></b>						
<b>ACRES</b>		<b>GOVT LOT</b>	<b>QTR</b>	<b>SEC</b>	<b>SEC</b>	<b>TWP RGE</b>
<b>7</b>	<b>1</b>			<b>3</b>	<b>1N</b>	<b>8E</b>
<b>15</b>	<b>2</b>			<b>3</b>	<b>1N</b>	<b>8E</b>
<b>28</b>	<b>3</b>			<b>3</b>	<b>1N</b>	<b>8E</b>
<b>30</b>	<b>4</b>			<b>3</b>	<b>1N</b>	<b>8E</b>
<b>8</b>		<b>N2SENE</b>		<b>3</b>	<b>1N</b>	<b>8E</b>
<b>7</b>		<b>S2S2SW</b>		<b>34</b>	<b>2N</b>	<b>8E</b>
<b>95</b>						

**43A 33119-00 AND 43A 33122-00**

ACRES	GOVT LOT	QTR	SEC	SEC	TWP	RGE
15.5		NW	2	1N	8E	
7	1		3	1N	8E	
15	2		3	1N	8E	
28	3		3	1N	8E	
30	4		3	1N	8E	
8		N2SENE	3	1N	8E	
10		N2N2	5	1N	8E	
103		S2	32	2N	8E	
122		S2	33	2N	8E	
10.5		SWSW	34	2N	8E	
1		SWSESW	34	2N	8E	
350						

4. Finally, 505 Ventures' *Motion* requests the following modification to the point of diversion for claims 43A 33116-00 and 43A 33117-00:

**NESWSW of Section 34, Township 2N, Range 8E.**

**PRINCIPLES AND CONCLUSIONS OF LAW**

1. The Water Court is required to address all issue remarks decreed on a claim as well objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The proposed point of diversion and place of use legal land description changes do not have a reasonable potential to adversely affect other water users and therefore do not require further notice as provided for in Section 85-2-233(6), MCA.

The changes do not constitute expansions of the elements of the claims, they merely reflect corrections to the paper water rights. The use of the water right on the ground has not changed.

### RECOMMENDATIONS

1. The evidence shows by a preponderance that the place of use for claims 43A 33116-00, 43A 33117-00, 43A 33119-00, and 43A 33122-00 should be modified as described in Finding of Fact No. 3. Additionally, the point of diversion for claims 43A 33116-00 and 43A 33117-00 should be modified as described in Finding of Fact No. 4.

2. Because the proposed place of use legal land description changes do not have a reasonable potential to adversely affect other water users, they do not require further notice as provided for in Section 85-2-233(6), MCA.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

Service Via Electronic Mail:

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 33116-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** 505 VENTURES LLC  
DEPT 35  
PO BOX 2652  
MENLO PARK, CA 94026

**Priority Date:** SEPTEMBER 14, 1898

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.60 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 95.00

**Source Name:** FOX CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	34	2N	8E	PARK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00	1		3	1N	8E	PARK
2	15.00	2		3	1N	8E	PARK
3	28.00	3		3	1N	8E	PARK
4	30.00	4		3	1N	8E	PARK
5	8.00		N2SENE	3	1N	8E	PARK
6	7.00		S2S2SW	34	2N	8E	PARK

**Total:** 95.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

33116-00	33117-00	33119-00	33121-00	33122-00	33123-00
33124-00	33125-00	33126-00	33128-00		

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 33117-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** 505 VENTURES LLC  
DEPT 35  
PO BOX 2652  
MENLO PARK, CA 94026

**Priority Date:** APRIL 18, 1895

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 95.00

**Source Name:** FOX CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	34	2N	8E	PARK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00	1		3	1N	8E	PARK
2	15.00	2		3	1N	8E	PARK
3	28.00	3		3	1N	8E	PARK
4	30.00	4		3	1N	8E	PARK
5	8.00		N2SENE	3	1N	8E	PARK
6	7.00		S2S2SW	34	2N	8E	PARK

**Total:** 95.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

33116-00	33117-00	33119-00	33121-00	33122-00	33123-00
33124-00	33125-00	33126-00	33128-00		

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33115-00	33117-00
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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 33119-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** 505 VENTURES LLC  
DEPT 35  
PO BOX 2652  
MENLO PARK, CA 94026

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

**Priority Date:** JUNE 20, 1903

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 350.00

**Source Name:** BRACKETT CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF BRACKETT CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESEW	31	2N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	WARD-HANSEN DITCH					
2		NENWNE	5	1N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
3		NENENE	5	1N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					

**Ditch Name:** WARD DITCH

4 SESWSW 33 2N 8E PARK

**Source Name:** BRACKETT CREEK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

5 SENWNW 3 1N 8E PARK

**Source Name:** UNNAMED TRIBUTARY OF BRACKETT CREEK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15.50		NW	2	1N	8E	PARK
2	7.00	1		3	1N	8E	PARK
3	15.00	2		3	1N	8E	PARK
4	28.00	3		3	1N	8E	PARK
5	30.00	4		3	1N	8E	PARK
6	8.00		N2SENE	3	1N	8E	PARK
7	10.00		N2N2	5	1N	8E	PARK
8	103.00		S2	32	2N	8E	PARK
9	122.00		S2	33	2N	8E	PARK
10	10.50		SWSW	34	2N	8E	PARK
11	1.00		SWSESW	34	2N	8E	PARK
<b>Total:</b>	350.00						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

33116-00	33117-00	33119-00	33121-00	33122-00	33123-00
33124-00	33125-00	33126-00	33128-00		

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 33122-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** 505 VENTURES LLC  
DEPT 35  
PO BOX 2652  
MENLO PARK, CA 94026

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

**Priority Date:** JUNE 11, 1893

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 224.40 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 350.00

**Source Name:** BRACKETT CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF BRACKETT CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESEW	31	2N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	WARD-HANSEN DITCH					
2		NENWNE	5	1N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
3		NENENE	5	1N	8E	PARK
<b>Source Name:</b>	BRACKETT CREEK					
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					

**Ditch Name:** WARD DITCH

4 SESWSE 33 2N 8E PARK

**Source Name:** BRACKETT CREEK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

5 SENWNW 3 1N 8E PARK

**Source Name:** UNNAMED TRIBUTARY OF BRACKETT CREEK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15.50		NW	2	1N	8E	PARK
2	7.00	1		3	1N	8E	PARK
3	15.00	2		3	1N	8E	PARK
4	28.00	3		3	1N	8E	PARK
5	30.00	4		3	1N	8E	PARK
6	8.00		N2SENE	3	1N	8E	PARK
7	10.00		N2N2	5	1N	8E	PARK
8	103.00		S2	32	2N	8E	PARK
9	122.00		S2	33	2N	8E	PARK
10	10.50		SWSW	34	2N	8E	PARK
11	1.00		SWSESW	34	2N	8E	PARK
<b>Total:</b>	350.00						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

33116-00	33117-00	33119-00	33121-00	33122-00	33123-00
33124-00	33125-00	33126-00	33128-00		